



## 1898 Letter from Charles Porter Nichols, Containing an “Old Historic Document” of 1734

**Actual Dates:** October 12, 1898 [letter]; October 4, 1898 [article]; June 19, 1734 [“old historic document”].

**Part of:** American Numismatic Society, Early Correspondence, 1858-1908.

**Main Correspondents:** Charles Porter Nichols; ANS Librarian Herbert Valentine.

**Main Subject:** Nichols donates this “old historic document” as he thinks it will be of interest to members of the ANS.

**Noted Documents:**

- Nichols thanks the ANS for their most recent Proceedings, and donates the “old historic document” [October 12, 1898]
- The “old historic document” [June 19, 1734]
- Nichols’ handwritten listing of historical events related to the old historic document? [various dates]

**See Also:**

- The 1898 “Sun” newspaper article was found with the letter and may or may not further describe the “old historic document.”

, 1898.

*BOSS COSBY AND JUDGE MORRIS.*

**A Notable Parallel—The First Attack on the Independence of Our Judiciary.**

TO THE EDITOR OF THE SUN—Sir: In view of the present attack upon the independence of the judiciary, it is interesting to turn back to the first instance of the kind occurring in the history of New York.

When the Colonial Governor, John Montgomerie, died, on the 1st day of July, 1732, Rip Van Dam, as Senior Councillor, succeeded to the office until the arrival of the new appointee from England. The man sent out was William Cosby, who a short time before had been Governor of Minorca, but had been removed from the office on account of his appropriation of the revenues and his wanton confiscation of the property of a Spanish merchant. Cosby was pompous in his disposition, possessed of a violent temper, and extremely avaricious. On his arrival in August, 1732, the Assembly voted him a gratuity of £750 for his alleged services in procuring the repeal of an obnoxious sugar bill. Lewis Morris, who was then Chief Justice of the Supreme Court, meeting him soon after the action of Assembly, told him of the present. But Cosby was only angered at the smallness of the amount, and shouted loudly: "Damn them, why didn't they add the shillings and pence? Do they think I came here for money?"

Within a short time Cosby served Van Dam with a copy of a royal order requiring him to pay over to Cosby one-half of the salary, perquisites and emoluments of the office received from the time of his appointment until Cosby arrived in America. Van Dam expressed his willingness to comply with the order if Cosby would account to him for what he had received, alleging that Cosby had collected some £6,000 more than had come into his hands, and, in fact, owed him £3,000. Cosby declined to accept this proposition, so Van Dam retained what he had collected.

Thereupon Cosby determined to bring suit, but he was puzzled to know how to proceed. The matter was one of account and could not be brought in the Supreme Court, as it possessed no equity jurisdiction. He could not sue in Chancery, as he himself was Chancellor, while a suit at common law would admit of a set-off by Van Dam, and he was fearful lest a jury should render a popular verdict against him. So finally he erected a Court of Equity by ordinance in the Supreme Court, under the name of the Equity side of the Exchequer, and directed Richard Bradley, the Attorney-General, to bring an action there in the King's name, although Cosby was the person beneficially interested in the result. The people of the province had always been most firmly opposed to the erection of an Equity Court without consent in General Assembly, and the Assemblies of 1702, 1708, 1711, and 1727 had passed resolutions condemning in the strongest terms the erection of any such court.

Lewis Morris, who had been Chief Justice of the Supreme Court since 1715, was one of the most distinguished men of his time. He had long represented the borough of Westchester in the Assembly, he had been a member of Council, a Boundary Commissioner, and was afterward Governor of New Jersey from 1738 to 1746. The second Justice of the Supreme Court was James De Lancey, afterward Governor, and the third was Frederick Philipse.

When the action was commenced by the Attorney-General, Van Dam was advised by his counsel, James Alexander and William Smith, the two most distinguished attorneys in the province, to bring suit against Cosby for the half of what Cosby had received over and above the amount collected by Van Dam. But the clerk of the court refused to affix a seal to the summons, and Cosby absolutely declined to answer the declaration. Accordingly, Van Dam was obliged to defend Cosby's action, and his counsel, by way of plea, offered

three exceptions to the being and jurisdiction of the court. The argument was set down for April 9, 1733. At the opening of the court, Lewis Morris delivered a long and exhaustive opinion against the jurisdiction of the court in equity causes, and then left the bench, refusing to have anything further to do with the case. The closing sentence of his opinion was this:

As I take it, the giving of a new jurisdiction in equity by letters patent to an old court that never had such jurisdiction before, or erecting a new Court of Equity by letters patent or ordinance of the Governor and Council without assent of the Legislature, are equally unlawful and not a sufficient warrant to justify this court to proceed in a course of equity, therefore, by the grace of God I, as Chief Justice of this province, shall not pay any obedience to them in that point.

It is needless to say that Cosby was intensely angered by the opinion. He wrote Morris a very savage letter, impugning his integrity and demanding a copy of what he had said in court. Morris sent him a copy of his opinion, together with a letter, a part of which follows:

As to my integrity I have given you no occasion to call it in question. I have been in this office almost twenty years, my hands were never fouled with a bribe, nor am I conscious to myself that power or poverty hath been able to induce me to be partial in the favor of either of them, and as I have no reason to expect any favor from you, so am I neither afraid nor ashamed to stand the test of the strictest inquiry you can make concerning my conduct. I have served the public faithfully and honestly according to the best of my knowledge, and I dare and do appeal to them for my justification.

Morris was then summarily removed from his office without the advice of Council, which was the course to be taken in such circumstances, although he had served for nearly eighteen years without complaint. His opinion was published and ran through two editions. In the following August De Lancey was commissioned as Chief Justice and Philipse Second Justice, and the people of the province thus saw the Judges of their Supreme Court arbitrarily reduced from three to two, for Daniel Horsemanden was not appointed Third Justice until 1736.

It was simply another case where the Boss did not consider that he had received "proper consideration" from the bench. The result was that the people of the province immediately became divided into two political parties, one the court party, favoring Cosby and his designs, the other the popular party, bound to resist to the utmost any infringement upon their rights and liberties. The popular party almost immediately started a newspaper in order that the people might become acquainted with the doings of their Governor, and the trial of John Peter Zenger followed, resulting in the establishment of the liberty of the press in North America, which Gouverneur Morris has eloquently described as "the morning star of that liberty which subsequently revolutionized America." In the latter part of 1734 Morris sailed for London armed with numerous petitions setting forth the evils of Cosby's administration and demanding his removal. Numerous delays occurred, and Cosby died before the London Board of Trade acted on the matter. He was successful, however, in procuring his reinstatement as Chief Justice of the Supreme Court.

The result of this first attack upon the independence of the judiciary was of incalculable benefit. The people of the province were thereafter absolutely united against all forms of governmental oppression, and the final triumph of popular government became greatly accelerated.

The same question is again up for decision. Are the Democrats of this city worthy successors of the men of 1734, or will they cast their votes in meek submission to the political boss, who, squat like a toad in front of their court, proclaims that no Democrats shall attempt to pass its portals unless they shall have first declared their willingness to submit to his dictation?

LIVINGSTON RUTHERFORD.

NEW YORK, Oct. 22.

Springfield Mass Oct 12<sup>th</sup> 1898

Herbert Valentine Esq

Librarian,

Dear Sir

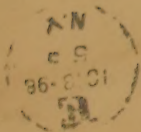
Please accept many thanks for a copy of the Annual Proceedings <sup>and</sup> Papers of the A<sup>N</sup>W<sup>A</sup> Society for 1898 rec<sup>d</sup> yesterday. I enclose an old MS document which I have had for 50 years or more, it may interest some of the members of the Society. Please accept the same. I have quite a number of large sheet Catalogues of coin sales in different parts of the Country, will look them up and send them to you as I doubt if you have them entire.

Yours truly  
Charles Porter Nichols

Envelopes of old historical  
documents - 1734.

Herbert Valentine Esq -  
- Librarian -  
- A N <sup>44</sup> A Society -  
- 17 West 43<sup>d</sup> Street -  
- New York -





April 20 1733 - Burlington. Letter for Gov. Cosby to the  
Lodge of Newcastle - the conduct of the same person  
as Ch. Justice of the Peace of N.Y. & the reason  
why Gov. Cosby removed him from that  
office, S.P.O. B.T. New York Vol. 22  
E-2. 19. Copy. 60 fols.

(See Papers of Lewis Morris p. 19. There is a  
long dispatch of the same character to the Lodge of  
Newcastle, dated May 3, 1732, printed in the  
N.Y. Col. Docs. Vol. V p. 942, and also Vol VI pp 821-22

N.Y. Hist. Soc. Collections Analyst. Index p. 158

Aug. 27 1733 - Letter for Lewis Morris complaining of  
his removal as C.J. of N.Y.

See N.Y. Col. Docs. Vol. V p. 951

Dec. 7. 1734. Cosby to Lords of Trade recommending  
appt. of Commissioners, & recommending  
removal of Lewis Morris.

N.Y. Col. Docs. Vol. VI p. 24

See Collections Vol. IV p. 26

Smith's N.Y. II pp 4-6. Under date of Jan. 8. 1733  
the P. C. ordered Gov. Cosby to transmit his  
reasons for the removal &c.

See Vol. IV p. 19 N.Y. Col. Docs.

His suspension took place in April 1733

Nov. 7 1735. Decision of the P.C. pronouncing the Gov's  
reasons for his removal insufficient.

Vol. IV p. 26

Cosby died in March 1736.

Morris returned to Nova Scotia 7<sup>th</sup> Oct. 1736.

Gold.

Arabic year 156 of Hegira  
Mamoudia 1213 ..

Byzantium John 2<sup>d</sup> 1118-1143

Virgin crowning Emperor

obverse a seated Christ

Philip of Macedon - head

figure in chariot with two horses

Trajan son d'or - head with  
inscription around -

man standing with boy standing  
under his extended arm

inscription around.

Marcus Aurelius son d'or

head with inscription around

woman seated with balance

in one hand cornucopia in other  
inscription around.

Gold A.D. 1071

Constantine 12<sup>th</sup> Monomachus  
head of Christ with inscription  
around  
concave side the King with  
heart in on hand & cross in the  
other inscription around.

A.D. 1408  
Theodore 2<sup>d</sup> head of King with  
~~reverse~~ holding spear, inscription around  
reverse Minerva seated with  
figurine in one hand & sceptre in other  
inscription around

Julian A.D. 360 head with inscription  
reverse warrior dragging man  
with one hand the other holds his  
armour mounted on a pole spear  
(this is a rude coin with hole)

# Electrum

from Syracuse - head with wreath

reverse tripod & inscription

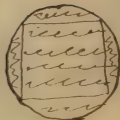
from Thessaly - Man's head with wreath

reverse woman's head hair in fillet

very small

Gold

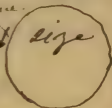
Barber dynasty in Spain



Antoninus Aug. Pius POTR P X V

Pater Patrie Tribunicia Potestas for the 15<sup>th</sup> time.

thin old head with wreath tied behind size



reverse robed standing figure.

with right hand extended holding globe

C O S'     / / / / (Consul for the 4<sup>th</sup> time



New York  
June 19<sup>th</sup> 1734

I am

With the Greatest Honour & Duty

My Lords

Your Lordships most humble  
and most Obedient Servant

J<sup>s</sup>

W. Cosby

Manuscript

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To the Right Honourable The Lords of the Committee  
of His Majesties most Honourable y<sup>e</sup> Privy Council  
for Plantation Affairs

May it Please your Lordships

1 In Obedience to your L<sup>ds</sup> Commands signified by your L<sup>ds</sup> Order of y<sup>e</sup> 8<sup>th</sup> Day of January Last, requiring me to Lay before your L<sup>ds</sup> y<sup>e</sup> Reasons which induced me to Remove M<sup>r</sup> Lewis Morris from y<sup>e</sup> Place of Chief Justice of y<sup>e</sup> Supreme Court of this Province I must humbly beg leave to Lay before your L<sup>ds</sup> what follows, as y<sup>e</sup> Reasons (among many others) for which I Removed y<sup>e</sup> said M<sup>r</sup> Morris from y<sup>e</sup> said place of Chief Justice, & Upon perusal whereof I humbly presume to hope your L<sup>ds</sup> will be of opinion I did not displace him without good & sufficient Cause.

2 Before I mention my Reasons for Removing him, I Beg your L<sup>ds</sup> permission to Acquaint you with y<sup>e</sup> Cause that induced me soon after my Arrival here to Enquire into his Character, One is that, When I went to y<sup>e</sup> Judges to take y<sup>e</sup> Oaths as by his Majesties Instructions I am Directed & receive Advice from M<sup>r</sup> Morris, who was then President of y<sup>e</sup> Council, y<sup>e</sup> Publick Seal, he made me wait some hours walking before y<sup>e</sup> Door of y<sup>e</sup> Council Room, before he would deliver y<sup>e</sup> Seal to me, being all that while busied in having a decree drawn up which he had given for parte in a cause in the Court of Chancery, tho he himself had never taken y<sup>e</sup> Oath of a Chancellor.

3 Another is that y<sup>e</sup> Day I Arrived at New York, Young Lewis Morris son to y<sup>e</sup> late Chief Justice, did before it was known that I was so near at hand, present a Petition to y<sup>e</sup> President & Council for an Ordinance to Adjourn y<sup>e</sup> Circuit Court of Albany for some short time because his Father being then President of the Council of Justice waited to deliver up the Seal to me, who was then expected; The Petition was Granted, y<sup>e</sup> Ordinance passed as he desired, And yet M<sup>r</sup> Morris did not go & Had that Circuit Court which was loudly Complained of And soon Reached my Ears.

My Reasons for removing of Mr Lewis Morris from the place of Chief Justice were on account of his Notorious partiality in the Administration of Justice of which I will only trouble you with the following Instances

Some years since y<sup>e</sup> Defenders in y<sup>e</sup> Parish of Jamaica in this Province brought an  
Agreement Against y<sup>e</sup> Church of England Minister for y<sup>e</sup> Church he preached in, & was Copey  
y<sup>e</sup> When y<sup>e</sup> Fryall came on the Dyts Council demurred to y<sup>e</sup> Plaintives Evidence Mr. Morris  
the Chief Justice desired them to waive y<sup>e</sup> Demourres, telling them that if y<sup>e</sup> Jury found for  
y<sup>e</sup> Pl<sup>r</sup>, he would grant y<sup>e</sup> Dyts a New Fryall, the Dyts Council were very unwilling to do  
it, but fearing y<sup>e</sup> worst if they refused, they did Consent, & y<sup>e</sup> Jury found for y<sup>e</sup> Plaintives  
The Dyts Council moved y<sup>e</sup> next term before Judgment for a New Fryall, & urged his promise, he denied  
at first that he gave any, But when they offered to make oath of it, he gave a Dash promise  
Ought not to be kept, & never would grant them a New Fryall, whereby they lost their  
Church, & y<sup>e</sup> Defenders have ever since had it.

A further instance of his Partiality is this, in 1714, the Town of West Chester being to the late Chief Justice Morris & George Clark half of their divided lands, Jacobus Van Courtland & Others claiming part of these lands, & conveyed to them. Both went to survey them, the people of West Chester hearing of it, applied as is said to Morris for Advice, but he that as it will, they got of Morris & Van Courtland of y<sup>e</sup> Peace, Walter Hunt & one Brogely both Freeholders of West Chester, Under Whom Morris claimed, to go on y<sup>e</sup> fact & their finding Courtland & his Partners surveying, they fined them for Abusers, & committed them to Prison, Courtland upon this brings this Action Against Hunt & Brogely. On y<sup>e</sup> 21<sup>st</sup> of June 1714, the Court was convened, the 21<sup>st</sup> Council joined in Damurres, & some considerable time of Damurres being first Argued on both Sides Morris who was then Chief Justice & W<sup>m</sup>. Waller the Chief Justice gave Judgment for y<sup>e</sup> Def<sup>t</sup> thus, in Effect Morris was Judge in his own Cause.

judgment for y<sup>e</sup> Defendant, in  
 & Delinquent Treasurers Committee by him, & in Justice of  
 when he was Chief Justice of Bay leave to lay before your eyes a  
 of this town of good Repute, having been formerly the  
 General of this Province till he was displaced by Governor  
 That great Delay in Justice, in apprehending y<sup>e</sup> Jurors &  
 of trouble, & Bothering him to fruitless Expence both of time & m<sup>o</sup>

I Dread y<sup>e</sup> People had of his power  
 Letter from Mr Jamison an attorney  
 New Jersey & Attorney  
 them a great Deal  
 Attendance on y<sup>e</sup> Courts  
 For the

For tho he Constantly adjourned y<sup>e</sup> Courts to Eight or Ten in the Morning Yet he was seldom  
sitting till Twelve, One or two Or sometimes three in y<sup>e</sup> Afternoon, tho y<sup>e</sup> Jurors & Others who  
have business Are Waiting from y<sup>e</sup> hours adjourned to, Not knowing when to Expect him,  
& fearing to be find if they happened not to be there, And it is with great concern Jam  
said under a necessity Informing your Sp<sup>d</sup> that I cannot help Imputing those Irregular hours  
in his sittings (Amongst several Others) to his pride in Making y<sup>e</sup> World wait his Leisure  
And his Intemperate Drinking in which he often spends whole Nights. This my Lord was  
his Behaviour in Town time In y<sup>e</sup> Town of New York, but in y<sup>e</sup> Circuits it was still more  
Intolerable, for tho his hours of adjournment & sitting were not only like those in  
Town but after y<sup>e</sup> Justice of y<sup>e</sup> Peace who by Ordinance were Obliged to attend him,  
while he was in y<sup>e</sup> Counties, & Other people who attend on those Occasions have come  
to y<sup>e</sup> Place where y<sup>e</sup> Offices were appointed to be held, many of them came Forty or  
fifty miles from their habitations, & sometimes Even after Jurors have been summoned,  
& sometimes suspended, Parties attended, & the Justices of y<sup>e</sup> Peace & Other officers have  
come to y<sup>e</sup> Place appointed for holding y<sup>e</sup> Circuit Courts, as by an Ordinance they are directed,  
& have waited there several days in expectation of y<sup>e</sup> Chief Justice, who then alone was to  
go y<sup>e</sup> Circuits, he has not come to hold y<sup>e</sup> Courts tho in health & able to have done it.  
And I beg Leave to Inform your Sp<sup>d</sup> that the Damage that one County viz that of  
Albany suffered by one ~~neglect~~ neglect of W<sup>m</sup> Morris holding y<sup>e</sup> Circuit Court was  
Computed at About £400

I should tire your Sp<sup>d</sup> should I enter further into y<sup>e</sup> Particulars of his Behaviour  
on the Circuits, Two however I beg Leave to mention

Once going to Albany he delayed his time so long that he had much a doe to reach y<sup>e</sup>  
Nearest part of the County on y<sup>e</sup> day which by the Ordinance it was to be Opened, but  
getting just within the Borders he opened y<sup>e</sup> Court & adjourned it to y<sup>e</sup> City of Albany  
y<sup>e</sup> next day being y<sup>e</sup> third, On that day likewise he Opened it but doubting whether the  
first Opening & adjourning was Regular he left y<sup>e</sup> Bench without Doing any business  
and set all this time Magistrates of y<sup>e</sup> County, Jurymen, Suitors & Witnesses were Obliged  
to attend to their great Expence & Loss of time

The Other was in y<sup>e</sup> same County, but at another time W<sup>m</sup> Morris having opened the Court

he Adourned it according to his Custom to the next morning, one getting up all night  
Night & Drinking hard, he layed & bed all y<sup>e</sup> Next Day till Near sun set, When y<sup>e</sup> People  
Growing Uneasie at his Delays, Some of his Friends or his Servants awaked him, he got up  
& Company being Admitted into his Chamber, he asked What hour it was they answered  
all most night, how can that be said y<sup>e</sup> Chief Justice y<sup>e</sup> sun is but just rising, & saying  
So, he took up his fiddle & played y<sup>e</sup> Company a Tune

These two particulars I assure your Sp<sup>d</sup> I had from some of y<sup>e</sup> Lawyers who were there  
at the time, & from severall other Persons of Good Credit, The County was Very Uneasie but  
Not knowing how a get redress were obliged to bear it

And in severall of the Counties he has neglected to go y<sup>e</sup> Circuits for many years, tho  
his Salary for this very service was in 1715 Augmented from £130  
to £200 a Year

That such Neglects (especially that of Albany in 1712) were Very Expensive & Incon-  
venient to the Colonies in General, as well as to those who had cause to be tryed the  
Detention of Mr Morris's own Son for Adournning the Circuit of Albany will  
testifie to your Lordships, And tho the Cause for Adournning that Circuit Court  
Caped on my way was here y<sup>e</sup> Very day y<sup>e</sup> Petition was read & Ordinance pass'd  
yet Mr Morris refused to go & hold it without acquainting me with it, or  
giving me any reason for such his Neglect, tho the clamours of y<sup>e</sup> People were  
Very loud on that occasion, Besides Mr Morris Junior's Petition y<sup>e</sup> Certificate of the  
Attorney General of the Plarke of y<sup>e</sup> Supream Court & Mr Garretton's Affidavit  
will be said be y<sup>e</sup> at Sp<sup>d</sup> whereby his great Delay of Justice his Bruw beating  
& other ill Treating of his Master Attorney General in y<sup>e</sup> Execution of his Duty  
And the great Annoyance the Sherrieff of a County had to summon a Jury, from y<sup>e</sup>  
terror y<sup>e</sup> People were Under of being Unnecessarily Detained by him from their  
Habitations & employes at a vast Expence will appear Very fully

And here your Sp<sup>d</sup> I have to Acquaint your Sp<sup>d</sup> that Mr Morris was Under an Obligation  
to go the Circuits, tho his Breachers were not; In 1691 a salary of £120 a Year was established  
By y<sup>e</sup> Governor Council on y<sup>e</sup> Chief Justice of this Province & continued till 1715 During  
which time 3 or 4 were had at Barrg But in 1715 y<sup>e</sup> Assembly finding that as the County  
Grew Populous the business was multiplyed & that there would be frequent Occasion for Courts  
Of Oyer